MIGRATION POLICY PRACTICE

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Chadian evacuees board a plane to Chad. IOM helped 314 Chadians leave the Central African Republic (CAR) and flew them back to Chad. This was the 19th evacuation flight conducted by IOM for third-country nationals exiting CAR. © IOM 2014 (Photo: Sandra Black).

CONTENTS

Introduction

Solon Ardittis and Frank Laczko[1]

Welcome to the new issue of *Migration Policy Practice*. This issue includes articles on a broad range of themes, covering national, regional and global policy issues.

The first article, by Vinod Mishra from the United Nations Department of Economic and Social Affairs Population Division, reports on the findings of a new global survey that asks governments to indicate their migration policy priorities. The survey, which was conducted in 2011, is distinctive because it asks governments to provide information on both their *immigration* and *emigration* policies. Contrary to the often negative reports about migration in the media, the survey finds that many more governments around the world have shown "**openness to regular immigration in the last two decades**", especially those in developed regions such as Europe. Two thirds of governments had policies in place in 2011 to **promote the integration of migrants**, which is a significant increase compared with the situation in 1996, when less than half of governments reported implementing such policies. The survey also finds that around half of the countries in the world now permit **dual citizenship**. Conversely, a quarter of countries around the world have **policies to discourage emigration**. All of the countries adopting this type of policy are located in developing regions. Moreover, many countries, especially in developing regions, are trying to encourage the **return** of their citizens and encourage investment in their countries by their diasporas – more than 100 countries have special units in government tasked with implementing such policies. Finally, the survey indicates that the majority (three quarters) of governments around the world consider "**irregular migration** as a major concern", although the survey does not indicate what aspects of irregular migration are of most concern to governments.

The second article in this issue focuses on new policy developments in a small country – Switzerland – which has a high percentage of migrants among its population. In February 2014, the Swiss population adopted an initiative aimed at stopping mass immigration. Vincent Chetail, Director of Geneva's new Global Migration Centre, discusses the background to the vote and the implications of the results for Switzerland and the European Union. He argues that despite the vote, Switzerland will not find it easy to change its immigration policy given the broad range of treaties that the country has already signed which limit its ability to impose immigration restrictions. These treaties mainly concern three areas: headquarters agreements with international organizations based in Switzerland, conventions regarding refugee protection, and treaties on the free movement of persons concluded with the European Union and the European Free Trade Association.

The third article by Poonam Dhavan and Davide Mosca, from the International Organization for Migration (IOM), focuses on migration and health and the Post-2015 Development Agenda. In particular, the article focuses on the links between tuberculosis (TB) and migration. Many of the key countries of origin of migrants are also countries that have a high incidence of TB, for instance, Afghanistan, Bangladesh, China, India, Indonesia, Pakistan, the Philippines and the Russian Federation. The article argues that it will be difficult to make further progress towards the Millennium Development Goal TB targets without expanding health coverage for TB services to migrants who remain a "key affected" and marginalized population in several countries.

The fourth article provides an outline of recent trends in migration between China and Europe. The article, by Frank Laczko and Tara Brian, from IOM, shows how Europe and China have become increasingly connected by migration. Although the European media often focus on irregular migration between China and Europe, the article shows that Chinese migration is much more diversified. The challenges for policymakers in Europe and China are how best to maximize the benefits of this increased mobility between China and Europe while reducing the risks associated with irregular migration and trafficking.

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The final article outlines the role of the Council of Europe's Parliamentary Assembly Committee on Migration, Refugees and Displaced Persons. The work of the Committee has not always achieved the attention it deserves. The Committee comprises 84 members and focuses on supporting policies to protect the rights of migrants, refugees, asylum-seekers and displaced persons. The Committee also promotes dialogue between the members of the Council of Europe to encourage the integration of migrants. In addition, the Committee is especially concerned to find ways to address the needs of internally displaced persons, especially those who have been displaced for a long period of time.

We thank all the contributors to this issue of *Migration Policy Practice* and would like to encourage readers to submit new articles. The deadline for submission of articles for the next issue of this journal is **10 June**. ■

This issue includes articles on a broad range of themes, covering national, regional and global policy issues.

Government views and policy priorities for international migration

Vinod Mishra and Julia Ferre[1]

This article summarizes results presented in a recent United Nations report International Migration Policies: Government Views and Priorities.*[2] The report describes government views and policy priorities related to immigration and emigration, and how these have evolved along with changing international migration patterns since around the time of the International Conference on Population and Development in 1994. Using the information gathered in the World Population Policies Database,[3] it provides information on regular and irregular migration, policies to promote immigration of highly skilled workers, policies to foster the integration of migrants into the host society, including naturalization policies, and other policies designed by governments in countries of origin, such as policies on emigration, acceptance of dual citizenship, policies to encourage the return of citizens and measures to promote involvement of diaspora in countries of origin.*

International migration is a global phenomenon that has been growing in complexity, scope and impact. Today, most countries are simultaneously countries of origin, transit and destination of migrants. Countries in both developed and developing regions face various developmental challenges and opportunities associated with migration.

There has been a growing consensus that migration is an integral feature of global development, and it is generally recognized that, if properly managed, migration can contribute to poverty reduction and improvements in human well-being in both sending and receiving countries. Already, two decades ago, the International Conference on Population and Development in 1994 recognized migration as an intrinsic part of global development and encouraged "cooperation and dialogue between countries of origin and countries of destination in order to maximize the benefits of migration for the development of both sending and receiving countries". Recently, the second High-level Dialogue on International Migration and Development in 2013 has re-emphasized the importance of international migration for development and reaffirmed the commitment to promote and protect the human rights of all migrants.

Migration policies in both origin and destination countries, as well as patterns and degrees of international cooperation, play an important role in determining the flows, conditions and consequences of international migration. The contribution of international migrants to development in both their countries of origin and destination depends on government policies to ensure that migration occurs in safe and legal conditions, with full respect and safeguards for their human rights.

Changing international migration patterns

According to recent United Nations estimates, the number of international migrants worldwide has increased from 154 million in 1990 to 232 million in 2013. Currently, the global population of international migrants is growing at about 1.6 per cent per year. Between 1990 and 2013, the migrant stock increased more than twice as fast in the global North (by 53 million) as in the global South (by 24 million).

The origin of international migrants has become increasingly diversified over the past two decades. By 2013, South–South migration was as common as South–North migration. Between 1990 and 2013, the migrant stock born in the global South and residing in the global North doubled – from 40 million to 82 million, while that from South to South increased from 59 million to 82 million. In 2013, 23 per cent of all international migrants in the world (54 million) were born in the North and resided in the North, whereas only 6 per cent of all migrants (14 million) who were born in the North resided in the South.

There is wide regional diversity. Major regions of the world account for different shares of the global stock of immigrants and emigrants. In 2013, Europe hosted 31 per cent of the global migrant stock, whereas

it was the origin of 25 per cent of all emigrants (of whom 65% were living within Europe). In comparison, Asia and Northern America hosted 31 per cent and 23 per cent of the global migrant stock, respectively, while they were the origin of 40 per cent and 2 per cent of all emigrants.

Although natural increase remains the main component of population change in the majority of countries worldwide, *net migration has become an increasingly important component of population change for countries in developed regions*. For instance, in Europe, where the number of deaths has exceeded the number of births since the late 1990s, positive net migration has so far offset population decline.

Policies on immigration

Immigration policies are implemented by governments through laws, regulations and programme measures with the objective to manage the volume, origin, direction and composition of migration flows. In many countries, mostly in more developed regions, migration legislations have been characterized by regularization of flows and measures to better integrate immigrants in the host societies.

In 2011, among the 195 countries with available data, a large majority of governments (73%) either had policies to maintain the current level of immigration or were not intervening to change it, while 16 per cent had policies to lower it and 11 per cent had policies to raise it.

Figure 1: Government policies to influence the level of immigration, 2011
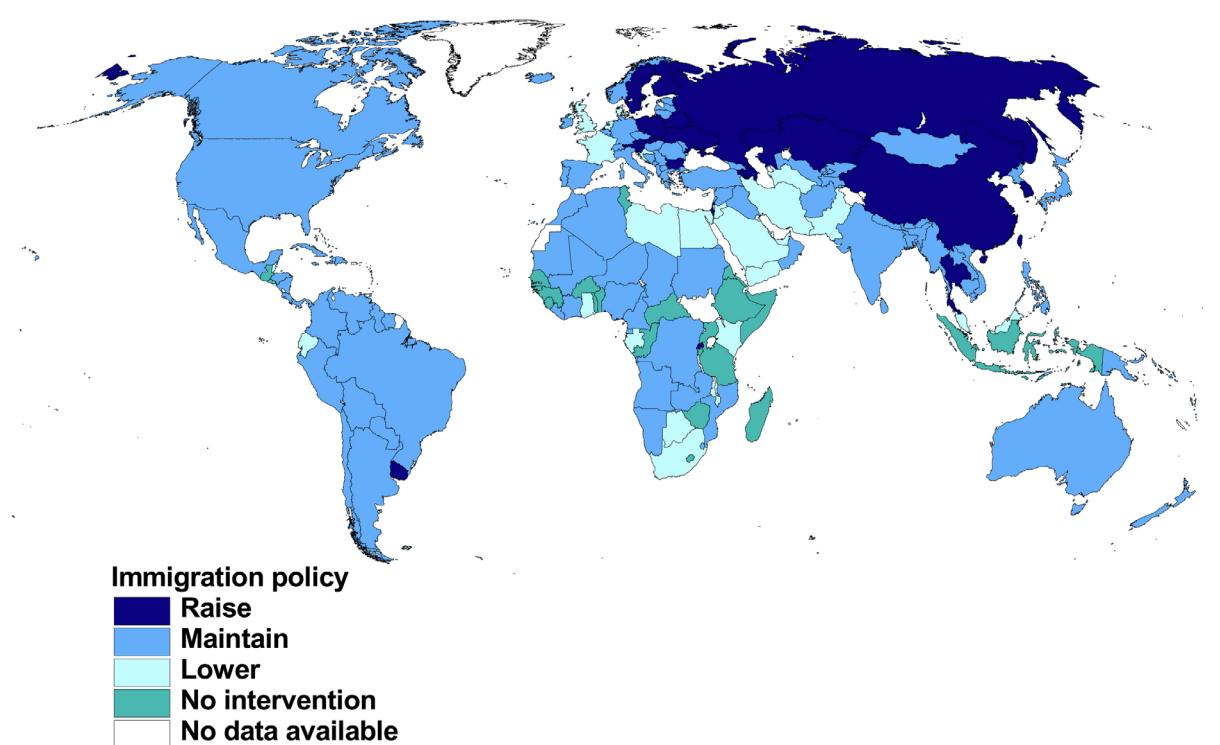
Immigration policy
- Raise
- Maintain
- Lower
- No intervention
- No data available

Source: United Nations, World Population Policies Database. Available from http://esa.un.org/poppolicy/about_database.aspx/.
Note: The boundaries on this map do not imply official endorsement or acceptance by the United Nations.

A growing number of governments have shown openness to regular immigration in the last two decades. At the global level, the percentage of governments with policies to lower immigration declined from 40 per cent in 1996 to 16 per cent in 2011, while those seeking to raise immigration increased from just 4 per cent in 1996 to 11 per cent in 2011.

Among the 25 countries with the largest migrant stocks, governments of five countries had policies to raise the level of immigration, 10 had policies to lower it, and the remaining 10 desired to maintain immigration at current levels or did not intervene to change it. The Russian Federation, with the second largest stock of migrants, desired to raise the level of immigration.

Figure 2: Governments with policies to influence the level of immigration, 1996, 2005 and 2011
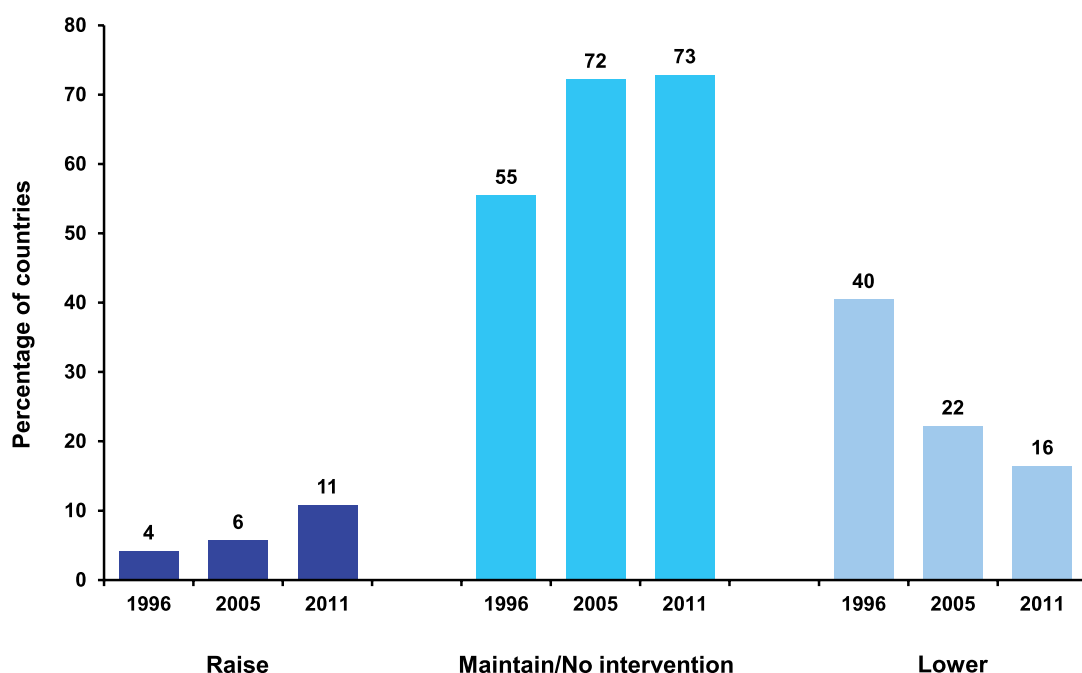
Source: United Nations, World Population Policies Database. Available from http://esa.un.org/poppolicy/about_database.aspx/.

The trend towards openness to immigration was especially pronounced in developed regions. The percentage of governments in developed regions that had implemented policies to lower immigration fell dramatically from 60 per cent in 1996 to just 10 per cent in 2011. From 1996 to 2011, the percentage of governments seeking to raise immigration increased sharply in developed regions, but not in developing regions. In developed regions, the percentage of governments that had policies to raise the level of immigration increased from just 2 per cent in 1996 to 22 per cent in 2011. While in developing regions, the percentage of governments with policies to lower the level of immigration declined from 34 per cent in 1996 to 18 per cent in 2011.

All 11 countries in developed regions with policies to raise immigration in 2011 were in Europe, including six in Eastern Europe (Belarus, Bulgaria, Poland, the Russian Federation, Slovakia and Ukraine), three in Northern and Western Europe (Austria, Finland and Sweden), and two in Southern Europe (San Marino and Slovenia).

Policies to attract highly skilled immigrants

Many receiving countries have shown greater selectivity towards highly skilled workers, favouring the admission of international migrants with skills considered to be in short supply. Highly skilled migrants are usually granted preferential treatment and are subject to fewer restrictions than low-skilled migrants regarding admission, length of stay, change of employment and admission of family members.

**Figure 3: Governments with policies to encourage the immigration of highly skilled workers, by level of development, 2005 and 2011**
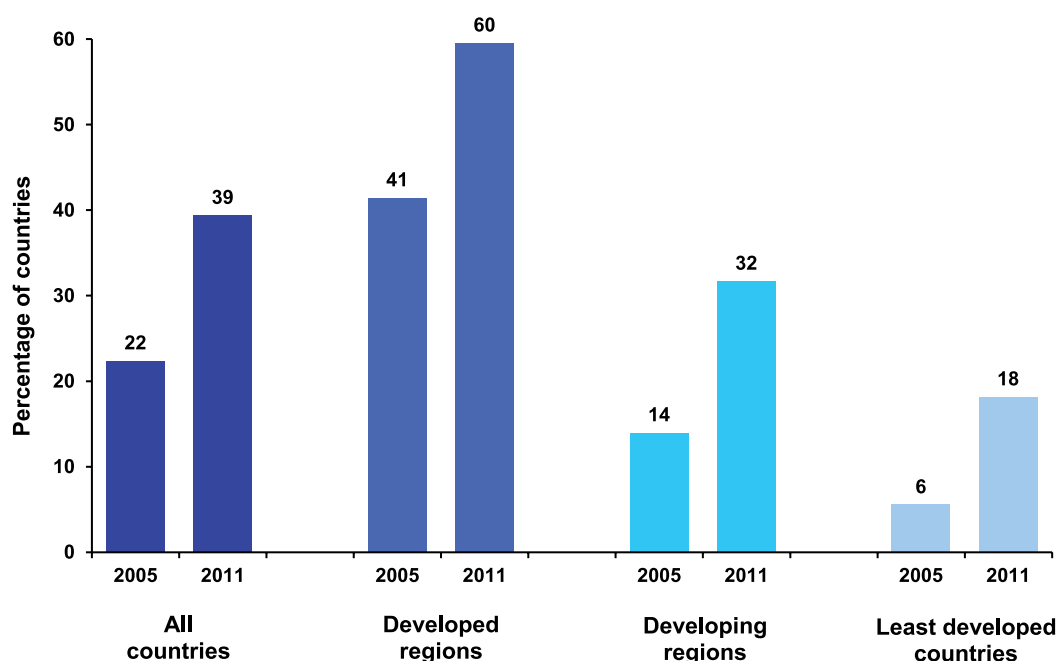
Source: United Nations, World Population Policies Database. Available from http://esa.un.org/poppolicy/about_database.aspx/.

In recent years, a growing number of governments have adopted policies to raise the immigration of highly skilled workers. The percentage of governments with policies to raise the immigration of highly skilled workers increased from 22 per cent in 2005 to 39 per cent in 2011. In 2011, *policies to raise the immigration of highly skilled workers were about twice as common among countries in developed regions (60%) as in developing regions (32%)*.

In 2011, few governments had policies to raise immigration for permanent settlement (6%) or for family reunification (9%). On the contrary, more than three quarters of all governments had policies to maintain their current levels of immigration for permanent settlement and family reunification, or they were not intervening to influence them.

Policies on emigration

Emigration generates both opportunities and challenges for sending countries, especially in developing regions. Policies addressing emigration of citizens can respond to a wide range of needs, both from the perspective of individuals who have left their countries of origin and from the perspective of governments in sending countries.

One in four governments worldwide has policies to discourage emigration. In 2011, 24 per cent of governments had policies to lower the level of emigration, 67 per cent desired to maintain the current level of emigration or did not intervene to influence emigration, and the remaining 9 per cent had policies to encourage emigration. Since the mid-1990s, the proportion of governments with policies to lower emigration has remained virtually unchanged, while the proportion with policies to raise emigration has increased steadily.

Figure 4: Governments with policies to influence the level of emigration, 1996, 2005 and 2011
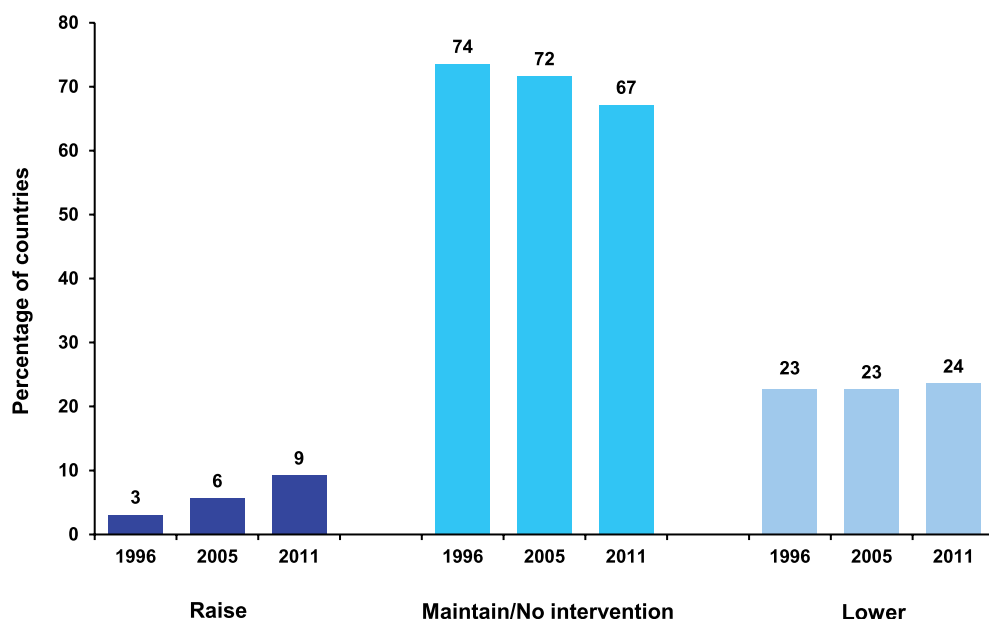
Source: United Nations, World Population Policies Database. Available from http://esa.un.org/poppolicy/about_database.aspx/.

In 2011, a higher proportion of governments in developed regions (84%) had policies to maintain the level of emigration or did not intervene to influence it than in developing regions (62%). *All 18 countries where governments had policies to raise the level of emigration in 2011 were in developing regions.*

Among the 25 countries with the largest emigrant stocks, governments of 18 countries either had policies to maintain their current levels of emigration or were not intervening to influence emigration levels. Among the top five emigration countries – India, Mexico, the Russian Federation, China and Bangladesh – Mexico had a policy to lower the level of emigration and Bangladesh had a policy to raise it, while the remaining three had a policy to maintain or not to intervene.

Policies to encourage the return of citizens

Although much of return migration flows tend to be spontaneous, promoting the return of citizens has been part of efforts by many governments to reverse the negative consequences of emigration. *A growing number of governments, especially in developing regions facing ever-growing emigration of skilled workers, have instituted policies to encourage the return of their citizens.*

The proportion of countries that have policies to encourage the return of their citizens has increased consistently since the mid-1990s, from 43 per cent in 1996 to 51 per cent in 2005, and 63 per cent in 2011. Governments in developing regions were more likely to have policies to encourage the return of their citizens (66%) than those in developed regions (54%). This gap has narrowed in recent years.

Diaspora engagement

Encouraging diaspora members to become more involved in the development of their countries of origin has gained increasing attention in recent years, both among governments in countries of origin and among their diaspora communities. *Many governments have set up diaspora units and implemented policy measures to encourage investment by diaspora.* Mobilizing the financial resources of diasporas has been an important strategy to enhance their potential contribution to development in the sending countries.

In 2011, out of the 144 countries with available data on diaspora units, 114 had established special government units to deal with the matters of interest to emigrants and their families living abroad.

Among the 101 countries with available data in 2011 on measures to attract investment by diaspora, only 46 countries had instituted at least one of the

six key measures. Measures to promote investment by diaspora included: (1) tax exceptions or breaks; (2) reduction of tariffs on goods or import duties for diaspora companies; (3) preferential treatment in providing credit; (4) preferential treatment in allotment of licences; (5) streamlined bureaucratic procedures for investment; and (6) diaspora bond or mutual fund. Among these, streamlined bureaucratic procedures for investment and provision of tax exceptions or breaks were the most frequently adopted measures (23% and 19% of the countries, respectively). *Governments in developing regions were more likely to have adopted diaspora investment measures than those in developed regions.*

Policies on integration, naturalization and dual citizenship

Integration

Successful integration of immigrants into the host society is essential to maximize the opportunities offered by migration. Many countries have undertaken initiatives to make it easier for immigrants to integrate into the host society. Policies to integrate non-nationals may include provisions for social services, involvement in civil and community activities, language training and legal provisions to ensure non-discrimination.

Policies to encourage integration of immigrants have become more common. Globally, 62 per cent of governments had policies in place in 2011 to promote the integration of non-nationals, an increase from 44 per cent in 1996.

Policies to encourage integration of immigrants were more common among countries in developed regions than in developing regions. In 2011, 91 per cent of governments in developed regions had policies to promote integration of non-nationals, compared with less than one half of governments in developing regions (47%) and less than one third in least developed countries (29%).

Figure 5: Governments with policies to integrate non-nationals, by level of development, 1996, 2005 and 2011
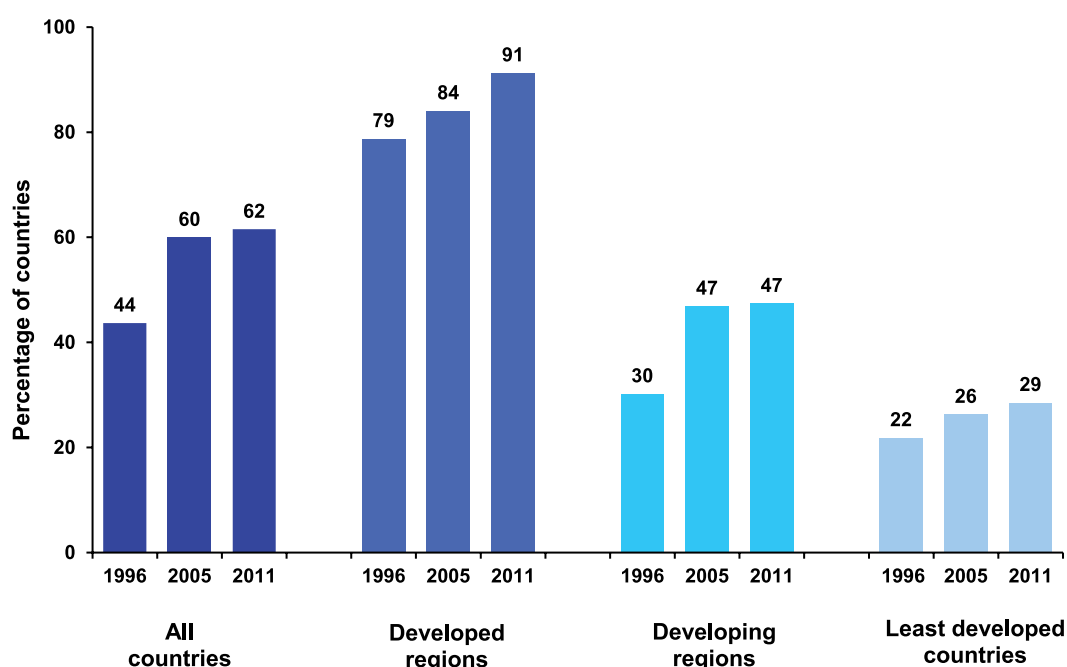
Naturalization

Most countries have also instituted provisions for the naturalization of migrants to allow equal rights and participation in the host society. *In some countries, however, conditions for naturalization are overly restrictive and disadvantage certain categories of immigrants.*

Figure 6: Governments with less restrictive* naturalization policies for immigrants, by level of development, 2011
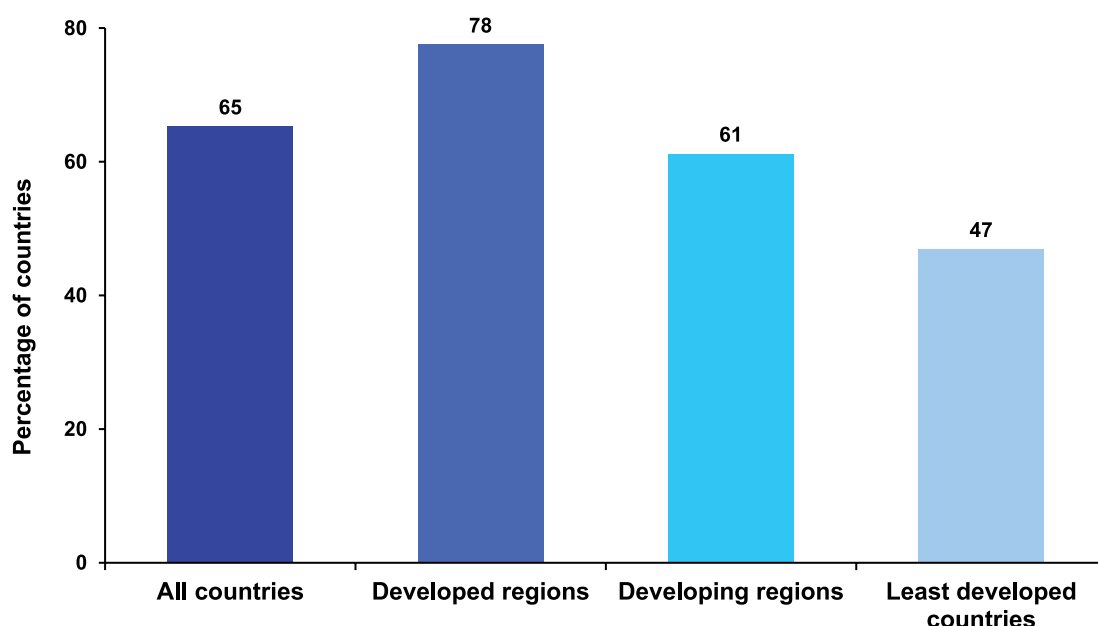
Source: **United Nations, World Population Policies Database. Available from** http://esa.un.org/poppolicy/about_database.aspx/.
Note: ***Naturalization policies are considered "less restrictive" when naturalization entitlement is not restricted to certain categories of immigrants and when residency requirement is less than 10 years.**

In 2011, one in three governments in the world (32%) had more restrictive naturalization policies, and in another five countries – Kuwait, Lebanon, Myanmar, Nauru and the United Arab Emirates – the governments did not allow naturalization under any conditions. Naturalization policies were considered "more restrictive" where the entitlement to naturalization was limited to a certain category of immigrants or where the residency requirement was 10 years or longer.

Naturalization policies were more restrictive in countries in developing regions than in developed regions. Seventy-eight per cent of governments in developed regions allowed "less restrictive" acquisition of naturalized citizenship in 2011, compared with 61 per cent of governments in developing regions and 47 per cent of governments of least developed countries.

Dual citizenship

The acquisition of citizenship in the destination country has implications for one's rights and entitlements, socioeconomic integration and prospects for family members. It also affects the links of migrants with their countries of origin.

About one half of governments worldwide do not permit dual citizenship. In 2011, 53 per cent of all governments had policies that allowed their citizens abroad to retain their citizenship of origin without restriction when acquiring a second country's citizenship, another 19 per cent allowed dual citizenship under certain conditions, and the remaining 28 per cent did not have any provisions to allow dual citizenship. Restrictions on dual citizenship related to either: (1) the countries involved (acceptance of dual citizenship when some specific countries are involved but not others); or (2) the rights involved (acceptance of dual citizenship with some restrictions to full citizenship rights).

Dual citizenship policies were less common among countries in developing regions than in developed regions. A much smaller proportion of governments in developed regions had a total prohibition of dual citizenship (12%) than that in developing regions (34%) or least developed countries (37%).

Figure 7: Governments with policies to allow dual citizenship, by level of development, 2011
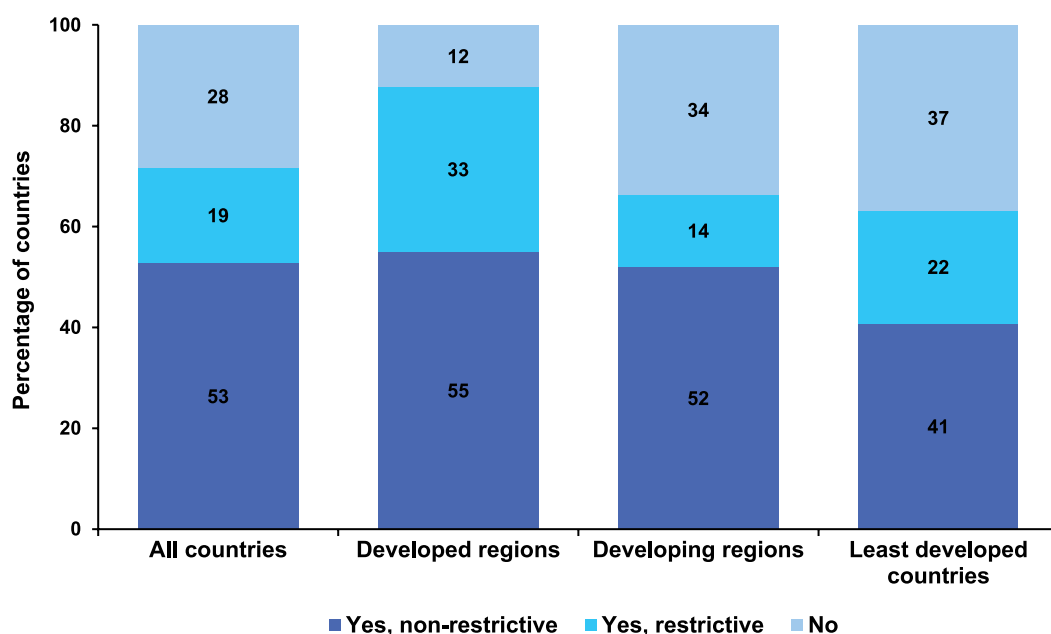
Irregular migration

Irregular migration poses multiple challenges to countries of origin, transit and destination, as well as to migrants themselves. Migrants in an irregular situation are particularly vulnerable to discrimination, exploitation and abuse. The actual number of migrants in irregular situation is difficult to determine, but it is believed to be significant.

A growing number of governments have responded to address irregular migration by reforming their immigration laws, promoting the return of irregular migrants and implementing regularization programmes. In 2011, of the 146 countries with data, three out of four governments viewed irregular migration in their countries as a major concern. *Governments of 22 of the 25 countries with the largest migrant stocks regarded irregular migration as a major concern.*

Governments in both developed and developing regions were about equally likely (77% in developed regions and 73% in developing regions) to consider irregular migration as a major concern in 2011.

Among countries with available data, irregular migration was a major concern for 84 per cent of governments in Africa and 79 per cent in Asia, compared with 77 per cent in Europe and 60 per cent in Latin American and the Caribbean. ■

Migrants in an irregular situation are particularly vulnerable to discrimination, exploitation and abuse.

The Swiss vote against mass immigration and international law: A preliminary assessment

Vincent Chetail[1]

On 9 February 2014, the Swiss population adopted a popular initiative aimed at stopping mass immigration. Though the text was adopted by a very slim majority of 50.34 per cent, the consequences of the new constitutional provisions are straightforward. They require that immigration be restricted by means of quantitative limits and quotas.

The wording of the new Article 121a of the Swiss Constitution is both vague and wide-ranging. Immigration quotas will apply to "any permission to remain delivered in accordance with the law on foreign nationals, including asylum" as well as "cross-border commuters".[2] The quotas must be based on "the overall economic interests of Switzerland with due respect for the national preference" for Swiss citizens.[3] Article 121a of the Constitution further requires that "no international treaty contrary to this article will be concluded", while existing treaties "shall be renegotiated and adapted within the time-limit of three years".

For the time being, the new constitutional provisions are not directly applicable.[4] They entail the adoption of a new legislation for the purpose of implementing them. Although the devil is in the detail, measures of implementation will be crucial for specifying the exact scope and limits of immigration quotas.

The purpose of this article is to identify which treaties are in contradiction with the new Article 121a of the Swiss Constitution. Though this survey is not exhaustive, no fewer than 58 treaties appear to be incompatible with immigration quotas. While covering various fields of international law and relations, these treaties mainly concern three key areas: headquarter agreements concluded with international organizations; conventions governing refugee protection; and treaties on the free movement of persons concluded with the European Union and the European Free Trade Association (EFTA).

Of course, it is premature to conclude that Switzerland has violated these treaties since the new constitutional provisions require renegotiating and adapting them. It must be noted, however, that Switzerland's margin for manoeuvring is particularly thin and such negotiations are bound to be extremely difficult. In any event, according to the law of treaties, Switzerland cannot unilaterally revise or terminate a treaty except where this is provided for by the treaty in question and, in the absence of such possibility, any amendment must be approved by all States party to the treaty.[5] The following sections examine which treaties are contrary to immigration quotas and assess the different options for the Swiss authorities.

Introducing immigration quotas is contrary to all agreements concluded between Switzerland and international organizations

The Agreement on Privileges and Immunities of the United Nations concluded between the Swiss Federal Council and the UN Secretary-General on 19 April 1946, explicitly excludes any kind of immigration restrictions. According to Article V Section 15(d) of the Agreement, "Officials of the United Nations shall [...] be immune, together with their spouses and relatives dependent on them, from immigration restriction and

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1   Vincent Chetail is Professor of International Law at the Graduate Institute of International and Development Studies (Geneva) and Director of the Global Migration Centre.

2   This is a free translation of the author based on the French version of the new constitutional text.

3   Article 121a adds that the criteria for granting permissions to remain notably include a request from an employer, the integration capacity of foreigners, and a sufficient and independent source of income.

4   The only exception concerns the prohibition of concluding new treaties which are in contradiction with Article 121a. Few days after the vote, Switzerland has refused to sign the Protocol on Free Movement with Croatia.

5   Article 54 of the Vienna Convention on the Law of Treaties. This does not prejudice the obligations of States under international customary law. For an overview, see: V. Chetail, "The transnational movement of persons under general international law: Mapping the customary law foundations of international migration law", in: *Research Handbook on International Law and Migration* (V. Chetail and C. Bauloz (eds.)) (Cheltenham, Edward Elgar Publishing, 2014), pp. 1–74.

alien registration."[6] This clause was restated in the Convention on the Privileges and Immunities of the Specialized Agencies adopted on 21 November 1947.[7]

Furthermore, most UN agencies hosted by Switzerland have concluded headquarter agreements for the same purpose. This notably concerns the International Labour Organization (ILO), the World Meteorological Organization (WMO), the World Health Organization (WHO), the International Bureau of Education (a UNESCO institute) and the World Intellectual Property Organization (WIPO). These agreements recall that "the Swiss Authorities will adopt all measures necessary to facilitate the entry onto Swiss territory, the sojourn on this territory and the exit therefrom of all persons called upon in an official capacity." They further specify that "all measures […] aimed at restricting the entry into Switzerland of foreigners, or of controlling the conditions of their stay, will not be applicable."[8]

This clear-cut exemption from immigration quotas is not limited to UN agencies. The same provisions can be found in many agreements concluded with a broad variety of key actors, including the World Trade Organization, the International Committee of the Red Cross, the International Olympic Committee, the Bank for International Settlements, the Inter-Parliamentary Union, the European Organization for Nuclear Research (CERN) and the Geneva International Centre for Humanitarian Demining.[9] Besides international institutions hosted by Switzerland, a similar exemption from immigration restriction applies to officials of

many other organizations, such as the Council of Europe, the European Patent Organization and the Asian Development Bank.[10]

Overall, Switzerland has concluded 53 agreements with international organizations and other related bodies for the purpose of exempting their staff from quotas and immigration restrictions. Against such substantial number of treaties, Switzerland has only two alternatives:

– **Option 1: The less probable option would be to renegotiate all these agreements.**

Such a course of action is still legally possible and even foreseen in most of these agreements. For instance, the 1946 Agreement on Privileges and Immunities of the United Nations provides that it can be modified only by agreement between the Secretary-General and the Swiss Federal Council. If agreement cannot be reached, the Secretary-General or the Swiss Federal Council may denounce the whole of, or any section in, this treaty.

However, such eventuality would be particularly time-consuming and cost-intensive. Perhaps more importantly, it would drastically undermine the attractiveness and credibility of Switzerland as a host country of international organizations.

– **Option 2: The more probable option would be to interpret the new constitutional provisions as excluding these agreements from immigration quotas.**

Indeed, according to the text of the new Article 121a, immigration quotas will be applicable to "any permission to remain delivered in accordance with the law on foreign nationals." However, residence permission for officials of international organizations is not granted by virtue of the law on foreign nationals. Instead, they have been excluded from any rules or

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6   SR 0.192.120.1. This agreement applies by analogy to the Universal Postal Union and to the International Organization for Migration. The same clause has been inserted in other agreements concluded with the International Telecommunication Union, the Intergovernmental Organization for International Carriage by Rail, and the International Federation of Red Cross and Red Crescent Societies.

7   Article V, Section 13(d), and Article VI, Section 19(e), 33 UNTS 261.

8   Agreement between the Swiss Federal Council and the World Meteorological Organization to govern the legal status of this Organization in Switzerland, Article 14. See also the similar agreements concluded with ILO (SR 0.192.120.282), UNESCO (SR 0.192.120.241), WHO (SR 0.192.120.281), WMO (SR 0.192.120.242) and WIPO (SR 0.192.122.23).

9   A similar provision can be found in other agreements concluded with the following institutions: Advisory Centre on WTO Law; the OSCE Court of Conciliation and Arbitration; Centre Sud; Global Alliance for Vaccines and Immunization Advisory; International Civil Defence Organization; International Union for the Protection of New Varieties of Plants.

10   This also concerns the African Development Bank, the Organization for the Exploitation of Meteorological Satellites, the European Organization for Astronomical Research in the Southern Hemisphere, the European Centre for Medium-Range Weather Forecasts, the Organization for the Prohibition of Chemical Weapons, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the International Criminal Court, INTELSAT, the European Telecommunications Satellite Organization, the International Mobile Satellite Organization, the Common Fund for Commodities, the Inter-American Development Bank and the International Atomic Energy Agency.

measures based on the Swiss legislation on foreigners. They are thus not covered by the new constitutional provisions. This literal interpretation of Article 121a should be confirmed by the Swiss authorities in order to avoid any ambiguity about the scope and the limits of immigration quotas.

Introducing immigration quotas is contrary to the Geneva Convention relating to the Status of Refugees, the United Nations Convention against Torture and the European Convention on Human Rights

While Article 121a of the Swiss Constitution says nothing about officials of international organizations, it explicitly includes asylum within the scope of immigration quotas. The new constitutional provision thus mixes up economic migrants with refugees in blatant contradiction with the United Nations Convention relating to the Status of Refugees.

Granting asylum depends on the need for protection and cannot be subordinated to economic considerations. The self-declared objective to exclude so-called economic refugees is all but convincing.[11] In fact, this would generate the exact opposite result since introducing quotas based on the economic interests of Switzerland would attract "economic refugees" at the detriment of "real refugees" in need of protection.

In any event, the new constitutional provisions cannot relieve Switzerland of its obligations arising from the principle of non-refoulement, which prohibits removing an individual to a country of persecution, torture, or inhuman or degrading treatment. This cardinal principle of refugee protection is based on Article 33 of the Geneva Convention, and reinforced by Article 3 of the United Nations Convention against Torture and the European Convention on Human Rights as interpreted by the European Court.

The principle of non-refoulement is further endorsed by Article 25 of the Swiss Constitution, and this basic guarantee remains plainly applicable since the new constitutional provisions have not superseded it. Furthermore, the principle of non-refoulement has been acknowledged by the Federal Council as a

peremptory norm of general international law[12] and, according to the Swiss Constitution, peremptory norms cannot be violated by a popular initiative aimed at revising the Constitution.[13]

Against this legal framework, immigration quotas introduced by Article 121a of the Swiss Constitution are inapplicable to foreigners who suffer persecution, torture, or cruel, inhuman or degrading treatment in their own countries. As a result, the new constitutional provisions can only be applied in very specific circumstances, that is, when there is no risk of persecution or other related mistreatment but the removal is still impossible for other reasons (such as material obstacle or health considerations). Even in such cases, it is difficult to see how immigration quotas can be implemented and in particular to what extent the economic interest of Switzerland can be accommodated with the existing legislation governing temporary admission.

One possible way of implementing the new constitutional provisions would be to introduce quotas for refugees who are not in Switzerland. Such resettlement schemes are implemented by several host countries in the European Union. Quite ironically, the possibility of requesting asylum abroad at a diplomatic mission has been suppressed by a popular vote in June 2013.[14] But here again, even if such a possibility is reintroduced in the Swiss legislation, this begs the question how economic considerations can be balanced with the need for protection for the purpose of implementing quotas.

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11 *Argumentaire : initiative populaire »contre l'immigration de masse »* (Comité Interpartis Contre L'immigration de Masse, 17 December 2013), p. 40.

12 Federal Council, Message concernant les initiatives populaires « pour une politique d'asile raisonnable » et « contre l'immigration clandestine », 22 June 1994, FF 1994 III 1471, p. 1486 ; Message relatif à une nouvelle constitution fédérale, 20 Novembre 1996, FF 1997 I 369, pp. 441–454 ; Message relatif à l'initiative populaire « contre l'immigration de masse », 7 December 2012, FF 2013 279, p. 287.

13 Article 194(2) of the Swiss Constitution. See also Article 139(3) and Article 193(4).

14 Federal Act of 28 September 2012 (Emergency Amendments to the Asylum Act), with effect from 29 September 2012 to 28 September 2015 (AS 2012 5359; BBl 2010 4455, 2011 7325).

Introducing immigration quotas is contrary to the Agreements on the Free Movement of Persons concluded with the European Community and the European Free Trade Association

The impact of the new constitutional provisions on these two agreements is the most complex issue. EU and EFTA citizens represent indeed around 66 per cent of the total population of foreigners in Switzerland.[15]

Both agreements lay down transitional measures during which immigration can be restricted in two different manners. During the first transition period, limitations for access to the labour market (including priority to nationals and quotas for non-nationals) were possible up to 30 April 2011. Then, during a further three-year period, the safeguard clause could be invoked for the purpose of reintroducing quotas. According to this clause, Switzerland could unilaterally limit the number of new residence permits for employed and self-employed EU citizens to the average of the three preceding years plus 5 per cent.[16] This possibility was used twice in 2012 and 2013 by the Federal Council,[17] with this transitional period set to end by 31 May 2014.[18]

It is not difficult to see that the very purpose of the popular vote is to block the full realization of free movement once the transitional period is over. Swiss authorities have thus hardly any alternatives:

–   **Option 1: The new constitutional provisions could still be construed as excluding the free movement agreements from their scope.**

Though this option has not been discussed so far, nothing in the text of Article 121a explicitly includes EU citizens within the scope of immigration quota. It is true, however, that the new constitutional provisions are broad and inclusive as quotas concern "any permission to remain" and they include "cross-border commuters".

One could however argue that, as a matter of principle, the Swiss Constitution must be interpreted in conformity with international law. Furthermore, the Swiss Federal Act on Foreign Nationals states that it applies to non-nationals "provided no other provisions of the federal law or international treaties concluded by Switzerland apply" (Article 2(1)). Article 2 further confirms that it applies only to the extent that the agreements on free movement concluded with the European Community and the EFTA do not contain any different provisions.

Following this stance, immigration quotas would be limited to persons who are not citizens from Member States of the European Union and of the EFTA. Of course, such interpretation will be criticized as neutralizing the popular vote for the very purpose of maintaining the current applicable legislation. On the other hand, one could reply that this was the price to pay for having submitted to a vote a particularly ambiguous text that has been finally approved by a very slim majority.

–   **Option 2: The second alternative would be to renegotiate the free movement agreements in order to maintain the safeguard clause, whether for an additional period of transition or as a permanent mechanism.**

The possibility of requesting a revision is explicitly provided by Article 18 of the bilateral agreement. However, negotiation will not be easy. It largely depends on the goodwill of the European Union since it is not obliged to accept an amendment in contradiction with existing treaties. The bargaining power of Switzerland is further undermined by its economic dependence vis-à-vis the European Union: around 60 per cent of Swiss exports are done with EU Member States.[19]

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15 Statistique des étrangers à fin Décembre 2013 (Federal Office for Migration, 2013).

16 According to Article 10(4) of the bilateral agreement, the safeguard clause can be used only if the number of residence permits in a given year exceeds the average for the three preceding years by more than 10 per cent.

17 RO 2012 2391; RO 2013 1247; RO 2013 1443.

18 For Bulgaria and Romania, which joined the European Union in 2007, the first transitional period can run up to 31 May 2016, and the safeguard clause can be invoked until 31 May 2019.

19 Foreign trade – indicators: Balance of trade, (Swiss Confederation, 2012). Economists are used to acknowledge that trade has been key to the prosperity in Switzerland. Exports account for 50 per cent of its GDP (see: http://www.tradingeconomics.com/switzerland/exports).

– **Option 3: If negotiation fails, the European Community or Switzerland may terminate the agreement on free movement by notifying its decision to the other Party.[20] This can be done even in the absence of negotiations.**

The consequences of such unilateral denunciation will be particularly drastic for Switzerland. It will impact many other areas of cooperation largely beyond the issue of free movement.

According to the "guillotine clause" contained in Article 25(4), termination of the agreement on free movement will automatically trigger, within six months of its notification, the termination of the six other agreements concluded with the European Union. These agreements concern a broad range of different fields, such as agricultural products, air transport, road and rail carriage of passengers and goods, government procurement, and scientific and technological cooperation. Moreover, Swiss citizens would no longer benefit from free movement within the European Union.

One should further stress that even the radical option of terminating the free movement agreement will not be totally in line with the new constitutional provisions. Indeed, termination of a treaty is only valid for the future. Article 23 of the agreement further restates that its termination shall not affect the rights acquired by private individuals during the previous application of the free movement agreement. This means in substance that both EU and Swiss citizens already settled in the territory of the other Contracting Party are still protected despite the termination of the agreement.[21]

Conclusion

The popular initiative aimed at introducing immigration quotas has put Switzerland in a very difficult position. It will not only impact a broad range of treaties that Switzerland has ratified but also the country's political and economic stance generally. The ambiguity of the text submitted to popular vote was probably the main reason behind its approval by a slim majority. Thus, the adoption of a new legislation to implement Article 121a of the Swiss Constitution will be critical for clarifying the exact scope and limits of immigration quotas. However, the alternatives available to Switzerland are few. Needless to say, any choice between the different options open to Switzerland will be, above all, highly political. Against such a complex background, a new vote on a more precise text could even become a realistic alternative. ■

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20 Article 25(3) of the Agreements on the Free Movement of Persons.

21 Article 23 further provides that the European Union and Switzerland shall then settle by mutual agreement what action is to be taken in respect of acquired rights.

> **The consequences of such unilateral denunciation will be particularly drastic for Switzerland. It will impact many other areas of cooperation largely beyond the issue of free movement.**

Tuberculosis and migration: A post-2015 call for action

Poonam Dhavan and Davide Mosca[1]

Introduction

Tuberculosis (TB) is an infectious disease of global public health significance, with an estimated 8.6 million infections and 1.3 million deaths in 2012 alone. While several countries around the world will achieve the TB prevalence, incidence and mortality targets set out in the 2015 Millennium Development Goals (MDGs), a lot remains to be done. Regions such as Africa and Europe are not on track to achieve some of the MDG TB targets, and multidrug-resistant TB (MDR-TB) infections remain an alarming cause for concern.

TB is not merely an infectious disease, but also a social condition – it disproportionately affects the poorest populations globally. TB risk has been shown to follow a socioeconomic gradient, with poor nutrition status, poor living and working conditions, low education and awareness, and low health-care access acting as key social determinants of TB-related morbidity and mortality. Thus, it is unfortunate that in spite of the availability of effective diagnostic and treatment regimens, 3 million out of the estimated 9 million persons who have TB each year still remain undetected. In countries where TB incidence is not decreasing, this is often due to late diagnosis, treatment relapse and increased risk of infection in vulnerable population subgroups.

Migration is a growing and dynamic phenomenon around the world, with 232 million international migrants and an estimated 740 internal migrants worldwide. The population of international migrants is growing at 1.6 per cent annually, with increasing diversification in countries of origin. Needless to say, population movement of such scale and diversity has a major impact on population health worldwide.

People move across or within borders between areas with different health profiles, which affects disease burden, health-care access and health-seeking behaviours. For example, it is interesting to note that the top countries of origin of international migrants also include several of the 22 high TB-burden countries (e.g. Afghanistan, Bangladesh, China, India, Indonesia, Pakistan, the Philippines and the Russian Federation). Therefore, the international migrant stock, including groups such as refugees, labour migrants, undocumented migrants, asylum-seekers and those in detention centres, merit special attention in global TB control. Similarly, given extensive health-care barriers that exist for internal migrants, especially in low- and middle-income countries, they are also a "key affected population". Indeed, the absence of targeted TB prevention and control strategies for migrants can pose challenges to reaching or maintaining TB elimination targets in several countries of origin, transit and destination for migrants. Further, progress towards the MDG targets and future post-2015 TB targets will be impossible without expanding health systems coverage for TB services to migrants who remain a "key affected" and marginalized population in several countries.

Migration: Tuberculosis determinants and outcomes

International migration influences the epidemiology of TB and TB policy outcomes by serving as a bridge across countries or regions with varied disease prevalence and other socioeconomic factors. Modern migration processes may be considered a continuum with several phases, including origin, transit, and destination, and in some cases, return.

At origin: The individual's health status, availability of and access to quality health systems, overall socioeconomic conditions, and occurrences of any disease epidemics and emergencies, including famines and political conflicts, make up the migrant's health and TB risks at origin. Differences in migrant screening criteria in the pre-departure phase, such as detection and treatment protocols, links with post-arrival health care and management of latent TB infections also influence TB-related morbidity during transit and at destination. Discriminatory practices such as denial of work permits due to TB history is also a concern in case of mandatory pre-departure medical examinations and a factor potentially

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undermining proper compliance with TB treatment among migrants.

During transit: The migratory journey affects TB risk of migrants, especially when travel occurs under precarious conditions. Undocumented migrants may face violence and be held in detention centres with poor nutrition and ventilation, often in close proximity with others with pre-existing infections. Migrants and asylum-seekers who suffer physical and physiological abuse may become averse to seeking health care from public services or private health-care providers due to mistrust. Modern migration patterns characterized by frequent, repeated travels between a migrant's country of origin and country of destination also increase the likelihood of infection, transmission and interrupted treatment.

At destination: Migrants' integration into the host country's health system (access, availability, affordability and acceptability), their living and working conditions, and socioeconomic status all influence the risks of contracting and effectively treating TB. Difficulties accessing housing, jobs, health care and other social services expose migrants to TB risk factors. Migrants' wages, especially for unskilled labour migrants or those working in the informal sectors, can often be lower than what national counterparts receive, which makes health-care spending an unusually high burden at the household level. Migrants' own health-seeking behaviour and cultural practices may affect their expectations and use of TB services. Discriminatory practices such as deportation after positive TB diagnosis is another concern for migrants while in the country of destination. Migrants face higher exposure to TB infection due to overcrowded living and working conditions and increased vulnerability to human immunodeficiency virus (HIV), malnutrition and substance use induced by marginalization and social exclusion. Delays in TB diagnosis among migrants are commonly associated with difficulty accessing health care, lack of education and poor health-seeking behaviors. Migrants often do not have access to correct TB-related information on prevention, transmission and latent infections due to language barriers as well as cultural beliefs. Stigma-related fear, lack of awareness of entitlement to health services and low health-related spending capacity as proportion of household income, as well as migrant-unfriendly health services, all lead to reluctance in seeking care or adhering to treatment.

Upon return: Migrants who lived in poor housing, received low wages and had limited access to health care are likely to return home less healthy than when they left. When migrants return to their places of origin with untreated TB, MDR-TB or complications thereof, the availability of standardized treatment and access to reliable health-care services becomes an important factor in their health outcomes and has profound public health implications for their families and communities. This can place financial burden on households if they do not have adequate health and social protection upon return or strain health-care systems in countries of origin.

Migrants of specific legal and social status, such as workers, undocumented migrants, trafficked and detained persons, face particular health determinants. Among migrant workers with a legal status, their access to TB diagnosis and care is subject to their ability to access health-care services and health insurance coverage provided either by the State or the employer. Irregular migrants face particular challenges, such as fear of deportation, that delay or limit their access to diagnostic and treatment services. Deportation while on treatment or poor compliance with treatment may lead to drug-resistant infection and increased chances of spreading TB in countries of origin, transit and destination. Migrants in detention centres or trafficked persons in transit or host countries often live in unsanitary and unhealthy conditions for extended periods of time, creating pockets of vulnerability to TB infection.

Migrant health policies for tuberculosis

Public health principles

A population health approach to policy development is critical to align multisectoral strategies and interventions for migration health. Several public health principles are critical to any discourse on TB prevention and control for migrants. The first principle is to avoid disparities in health status and access to TB-related services between migrants and the host population. The second closely associated principle is to ensure migrants' health rights. This entails limiting discrimination or stigmatization, and removing impediments to migrants' access to preventive and curative interventions in line with basic health entitlements of the host population. The third principle is to reduce excess mortality and morbidity from TB among migrant populations, especially among those who are forcefully displaced or affected

by conflicts. The fourth and final principle is to minimize the negative impact of various phases of the migration process on migrants' TB-related outcomes. As TB is an infectious disease, attention has to be paid to balance the human rights of persons affected by TB with the needs to safeguard population health in host communities. In addition to public health principles, countries are required to uphold obligations to human rights instruments such as Article 12 of the International Covenant on Economic, Social and Cultural Rights, and General comment 14 that speaks of the right of migrant populations to access health services in a non-discriminatory manner. Finally, with growing attention to active systematic TB screening for at-risk groups such as migrants and refugees, sound screening principles should be followed. These principles include ensuring that any migrant screening programme is accompanied with appropriate treatment and care facilities, follows medical ethical principles, and ensures synergies between health and social services delivery.

Developments in global tuberculosis strategy

As the world counts down to the 2015 MDG targets, national governments, World Health Organization (WHO), the Stop TB Partnership, the Global Fund and other stakeholders in the fight against TB are designing new strategies and targets to reinforce efforts for TB elimination globally. There is widespread recognition that further progress will be subject to identifying risk groups (including migrants) and prioritizing interventions. The draft World Health Assembly resolution that will be considered by Member States in May 2014 explicitly recalls the 2008 World Health Assembly (WHA) Resolution 61.17 on the Health of Migrants, and calls for greater collaboration between low- and high-TB-incidence countries to strengthen TB control and monitoring, including for labour migrants. The 2014 World TB Day campaign – with its call to find, treat and cure the 3 million people "missed" by TB programmes – notes how those missed include migrant groups. As the Global Fund issues guidance and implements its new funding model for the coming years, it again explicitly notes the need for countries to prioritize interventions and address "key affected populations", including migrants, refugees and displaced populations (as well as miners and indigenous communities that are largely comprised of migrants in many countries).

These global health policy developments have not occurred in isolation, but are a response to growing evidence and understanding that social and economic inequalities sustain migrants' vulnerability to TB, as do discriminatory policies in non-health sectors such as immigration, labour and social protection. Migrants are particularly vulnerable to health inequities, inadequate social protection, discrimination, human rights violations and stigmatization. A high burden of TB-related (and other disease-related) morbidity and mortality among migrants can have negative economic effects at the household level for migrants and their families, at the societal level due to loss of productivity and revenue in the industries that hire them, and at the national government level through financial burden on health systems in both source and destination countries, and loss of remittances for countries of origin. Thus, policy action is needed to ensure that the needs of migrants are adequately addressed in global efforts for the "missing 3 million" people who are left out of TB-related health care around the world.

Four building blocks for action

In the Post-2015 Development Agenda, health is proposed to be addressed with the overarching goals of maximizing healthy life expectancy and universal health coverage; however, this should be accompanied with explicit focus on the underlying determinants of health and measure health coverage for marginalized populations like migrants. Likewise, national and international TB policies (and other related health and non-health policies) should explicitly recognize migrants as a marginalized and disadvantaged group in the post-2015 development era. This includes addressing migrants in adoption and implementation of the proposed *WHO resolution on the global strategy and target for TB prevention, care and control after 2015*. Design and implementation of multisectoral comprehensive TB policies should support the implementation of the four key pillars of the global migration health operational framework (2010), as proposed here.

Measurement and analysis of tuberculosis burden among migrants

Effective TB control policies and programmes need an epidemiologic evidence base. Whereas many countries have well-defined estimates for their general populations, national TB programmes, public health agencies and donors in high- and low-burden countries

are faced with a lack of evidence on TB burden and intervention effectiveness on migrants. TB prevalence surveys and other surveillance mechanisms should include migrant populations, and also migration-related variables (such as country of birth or last residence, length of stay and travel history) in routine health data monitoring and analysis. Appropriate data protection and confidentiality principles should be respected in case of undocumented migrants and trafficked or detained persons. Health-care systems that cater to migrants either before arrival or at destination, and even in settings such as refugee camps and detention centres, should report findings to national TB notification systems. Health authorities should make better use of administrative data such as census, labour surveys, immigration records and education data to identify migrant groups and ensure disaggregation of health information accordingly. There is a need for better documenting cost-effectiveness and relative merits of various tools and policies in place for migrant screening programmes to draw lessons from individual countries and inform coherent strategies in TB screening policies and practices. Evidence is needed also on the economic impact of not addressing TB among migrants, and review of TB funding practices for hard-to-reach migrants to inform future migration health policies.

Robust migrant-sensitive health systems for an effective tuberculosis response

National health policies should support a rights-based health systems approach, sensitizing medical and administrative personnel to health profiles of migrants and building cultural competency reflective of migrants' needs. TB diagnostics, treatment and care for migrants should be integrated within national TB programmes with dedicated resources, including MDR-TB and TB-HIV management and migrants' access to innovative TB technologies and services. Binational or regional policies are needed to establish cross-border referral systems with contact tracing and information sharing to ensure continuity of care for migrants and enhance harmonization of treatment protocols across borders. Close monitoring and communication is needed between health systems across countries, and investments should be made for capacity-building of TB clinics in both the receiving and sending countries. Other factors that influence TB outcomes, for example, overcrowded living and working conditions for miners, should be addressed. The health sector should work closely with non-health sectors like employers and border authorities whose policies and systems impact TB-related outcomes among migrants. Migrant communities should be empowered through social mobilization and health communication policies for a participatory approach to TB prevention and control.

Intersectoral policy and legal frameworks: Health-in-all-policies approach

To achieve the global TB goals, it is critical to ensure policy coherence and shared solutions between health and non-health sectors, such as immigration and labour, and to implement the WHA 61.17 Resolution on the Health of Migrants. National TB policies need to clearly address migrants' issues, with political stewardship and accountability through monitoring and evaluation. Any policy or legal frameworks should be supported by timely and sufficient funding. TB policies should address health promotion for migrants – avoiding stigma, discrimination and restrictions to travel for people with no infectious TB and deportation for those affected by TB. National legislation should be adopted to improve migrants' access to TB services, regardless of legal migration status, and implement social protection measures as part of a multisectoral approach to TB control. National authorities should be equipped to regulate and monitor TB treatment offered by informal or private health-care providers, where vulnerable and poor populations including migrants often seek TB care. Low-incidence countries that implement overseas TB screening programmes should consider harmonization of screening protocols, along with measures such as contact tracing, detailed follow-up evaluation of migrants with latent TB infection, reducing migrant barriers to access health services and a cross-border or international registry to ensure tracing and continuity of care for individual TB patients. Health insurance schemes designed to cover migrants such as immigrants, workers and students, as well as their families, should consider portability of coverage for TB treatment and follow-up. In crises, especially prolonged conflict and disaster settings, pre-existing national TB programmes should be strengthened, and TB detection and treatment for displaced persons be included in the emergency health response. Non-health sector policies that can influence TB outcomes should be reviewed to ensure coherence with national TB policies for migrants. Finally, upstream-level interventions like poverty-reduction strategies, social protection and public campaigns against discrimination are needed as part of a multisectoral approach to reduce TB burden among migrants.

Networks and multi-country partnerships with common goals

Meaningful reductions in the risks of TB disease for migrants and surrounding communities need effective multisectoral partnerships between multiple public and private sector agencies, within and across countries. Policies should foster partnerships between various government sectors, private sectors (health-care providers, pharmaceutical companies, insurance agencies and employers), civil society (including migrant groups), humanitarian and development agencies, and the international donor community. Political commitment is needed among migrant-receiving countries for sustained investments in targeted TB programmes in countries of origin and transit, especially in high-TB-incidence countries. Health policies for management of infectious diseases like TB should be considered in bilateral or regional agreements on migration (for example, labour migration and border management), with appropriate accountability mechanisms. ■

Emerging concerns in Tuberculosis and Migration

Multidrug-resistant tuberculosis (MDR-TB) is frequently caused by inadequate treatment or improper use of medications, leading to increased morbidity and mortality and high costs of treatment. Migrants are particularly vulnerable to MDR-TB due to overcrowded living conditions, delayed diagnosis from financial constraints, poor health literacy and health-seeking behaviours, poor treatment adherence and high default rates. Without timely TB diagnosis, treatment, contact tracing and cross-border continuity of care for migrants, hard-to-reach mobile populations and surrounding communities, MDR-TB control will remain a challenge.

Forced displacement of persons after conflict or a natural disaster is often associated with an increased risk of TB due to factors such as malnutrition, overcrowding in camps or other temporary shelters, and disruption of health services, resulting in the interruption of TB treatment that may result in drug resistance. There remains an ethical dilemma in postponing TB programmes until the social setting becomes more appropriate for implementation, and an analysis comparing the risks and benefits of delaying TB programmes in complex emergencies is needed.

Migrant workers in the mining industry are at a high risk for TB due to poorly ventilated, overcrowded living and working conditions and occupational hazards like silicosis. In Southern Africa, where a majority of mine workers are migrants from neighbouring countries, nearly one third of the TB infections are estimated to be linked to mining activities. The underlying social and structural determinants of this largely disproportionate TB burden in the mining industry lies outside the traditional health sector, and can only be addressed through sustained and multisectoral collaboration between ministries of labour, mining and health, as well as the private industry.

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Health policies for management of infectious diseases like TB should be considered in bilateral or regional agreements on migration (for example, labour migration and border management), with appropriate accountability mechanisms.

China and Europe: Increasingly linked by migration

Frank Laczko and Tara Brian[1]

Introduction

China and Europe are becoming increasingly interconnected due to migration. Since 1980, the number of Chinese in Europe has more than tripled (Latham and Wu, 2013). Official figures indicate that today nearly a million people living in Europe are Chinese-born (UN DESA, 2013). The real figures are likely to be much higher as much Chinese migration remains undocumented (CCG, 2014). Many of those who move to Europe are temporary migrants, especially students, who later return to China. This short article describes the rise in Chinese migration to Europe, and discusses the factors behind this increase.

Top destinations

Four countries in Europe – the United Kingdom, France, Italy and Spain – host nearly three quarters of all Chinese migrants (Latham and Wu, 2013). Particular growth has been seen in Italy and Spain where many Chinese migrants are entrepreneurs and workers in the textile and fashion industries (Zhang, 2013). But many other European countries, including Romania, Lithuania and Sweden, have been attracting more Chinese migrants in recent years. For example, 18 per cent of work authorizations in Romania in 2011 were issued to Chinese; Chinese are the third largest group receiving work permits in Lithuania; and non-seasonal workers from China are also prominent in Sweden (OECD, 2013).

## More and more Chinese come to Europe to study

Over half a million Chinese study abroad each year, with many attracted to Europe. The main European destinations for Chinese students are: the United Kingdom, hosting roughly 50 per cent of all Chinese students in Europe in 2011 (65,906); France (25,923); and Germany (17,822) (UIS Data Centre) (see Figure 1). China is the top country of origin of foreign students in Germany and the United Kingdom, and the second most important country of origin in France (UIS Data Centre). The growing wealth of the middle class in China means that more and more families are able to fund the education of their children abroad. The number of students self-financing their studies has increased dramatically and these students now represent the majority of Chinese studying in Europe, compared with the students funded by the Chinese Government (CCG, 2014).

China benefits from this migration, as more Chinese students are returning home, following the completion of their studies. Worldwide, more than 186,000 students returned from abroad in 2011, according to official Chinese statistics (OECD, 2012:181). In 2011, the number of returning students was more than half the number of outgoing students for the first time (OECD, 2012:181).

China benefits from this migration, as more Chinese students are returning home, following the completion of their studies.

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Figure 1: Chinese nationals studying in European countries, 2002–2011
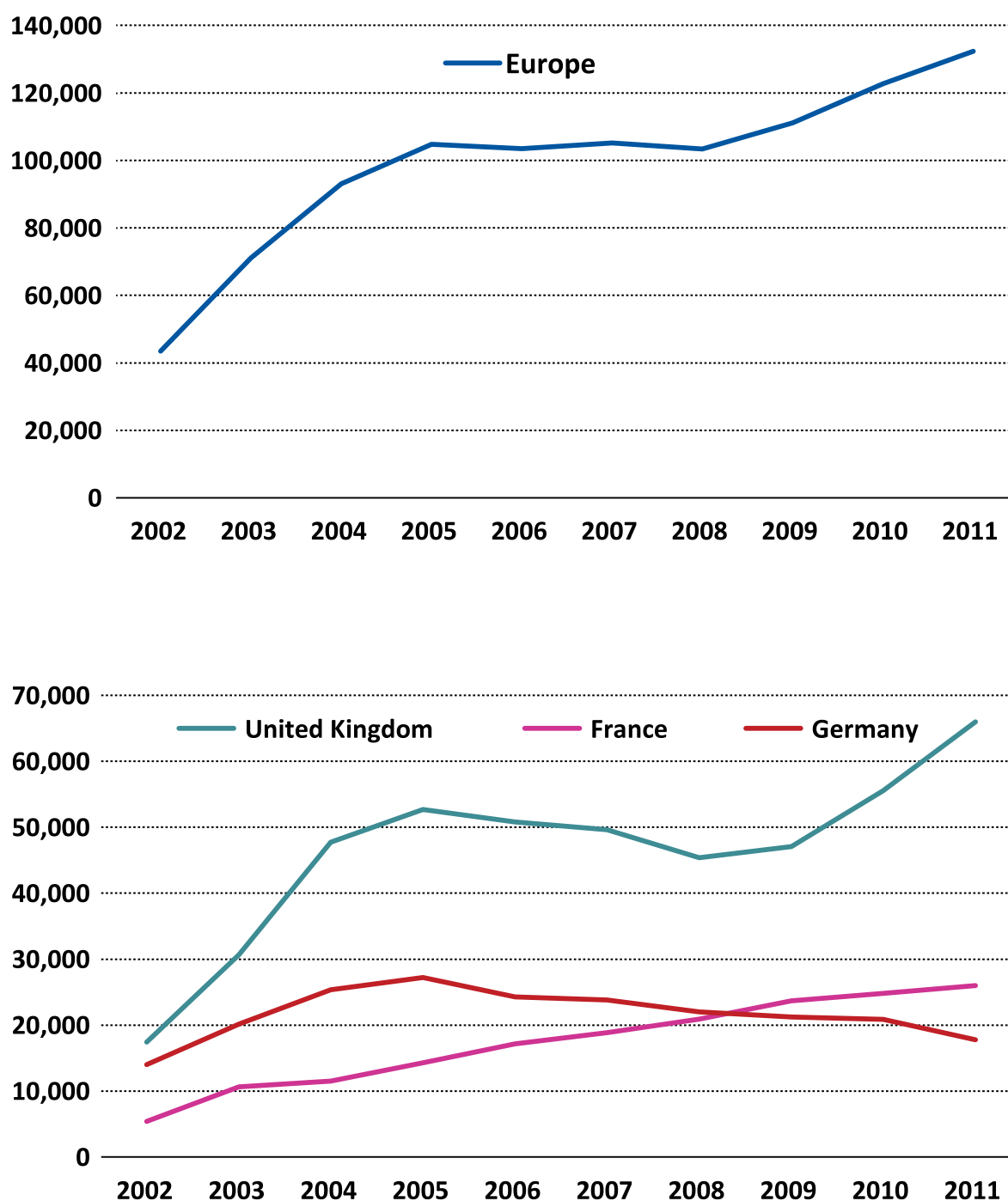
Source: UNESCO Institute for Statistics (UIS) Data Centre, accessed January 2014.
Note: Country data considered for total Europe figures include EU 28 MS plus Norway, Switzerland and Iceland.

Investment and tourism

Chinese are not only coming to Europe to study, they are also coming to Europe in increasing numbers to invest. For example, Chinese investment in London's real estate has increased remarkably and is predicted to continue to grow in the coming years. Recent research by Jones Lang LaSalle Inc., a Chicago-based real estate service and investment company, showed that Chinese investment in London's real estate market has risen more than 1,500 per cent since 2010, making China the third largest non-domestic purchaser in the United Kingdom, behind Germany and the United States (Chunyan, 2014).

Ethnic Chinese networks, involving both communities abroad and home communities in China, play an important role in facilitating cross-border investments (Zhang, 2013). For instance, research on migrant entrepreneurs in Eastern Europe indicates migrants utilize connections in origin communities in China as well as ties with ethnic Chinese communities in Europe to create new business opportunities (Zhang, 2013).

However, obstacles for Chinese businesspeople still exist. For instance, a 2013 EU Chamber of Commerce in China survey of 74 Chinese companies that had invested in Europe suggested that Chinese companies face barriers in Europe, with 32 per cent of respondents reporting difficulties with residence and work permits, 29 per cent citing problems with labour laws, and 28 per cent finding taxes and accounting problematic (Silk, 2013).

International tourist arrivals in Europe, the most visited region in the world, were up by 3 per cent in 2012, after growing by 6 per cent in 2011. Europe accounts for 52 per cent of all international arrivals worldwide (UNWTO and ETC, 2013). China became the number one source market in the world in 2012, spending USD 102 billion on international tourism, up by 37 per cent from 2011, and up almost eightfold over the past 12 years (UNWTO and ETC, 2013). In 2011, over 3 million Chinese travelled to Europe, making it the most popular region of destination for Chinese after Asia and the Pacific (UNWTO and ETC, 2013). The European tourist industry has focused on attracting group tours from China, a market that opened following the granting of Approved Destination Status (ADS) to most European countries in 2004 (UNWTO and ETC, 2013).

Some countries fear, however, that the rising number of tourist visits might increase irregular migration by making it easier for some Chinese visitors to overstay.

Irregular migration and trafficking in human beings from China to Europe

The United Nations Office on Drugs and Crime (UNODC) estimates that up to 36,000 Chinese irregular migrants use smuggling services to reach the EU on an annual basis, which would generate up to USD 600 million a year (UNODC, 2013). Irregular migration is often facilitated by illegal operations run by snakeheads in provinces of origin, such as Fujian and Zhejiang (Latham and Wu, 2013). It is estimated that new Chinese migrants from Fujian Province were between 900,000 and 1 million by the early 2000s, of which 40 per cent to 50 per cent went abroad via irregular channels (Latham and Wu, 2013). However, according to research conducted under IOM's Capacity Building for Migration Management in China project, irregular migration from China to Europe declined in the late 2000s. This can be attributed to the increasing number of alternative, safer ways of reaching Europe through regular means (Latham and Wu, 2013).

Both refusals of entry at external borders and numbers of Chinese nationals found to be illegally present in EU Member States and/or the Schengen Area have declined considerably from over 6,000 refusals in 2008 to just 1,675 in 2012. The number of Chinese nationals found to be illegally present has also declined significantly from over 17,000 in 2008 to 10,370 in 2012 (Eurostat, 2014) (see Figure 2).

It is estimated that new Chinese migrants from Fujian Province were between 900,000 and 1 million by the early 2000s, of which 40 per cent to 50 per cent went abroad via irregular channels (Latham and Wu, 2013)

Figure 2: Trends in refusals of entry and numbers of Chinese nationals found to be illegally present in EU 28 plus non-EU Schengen, 2008–2012
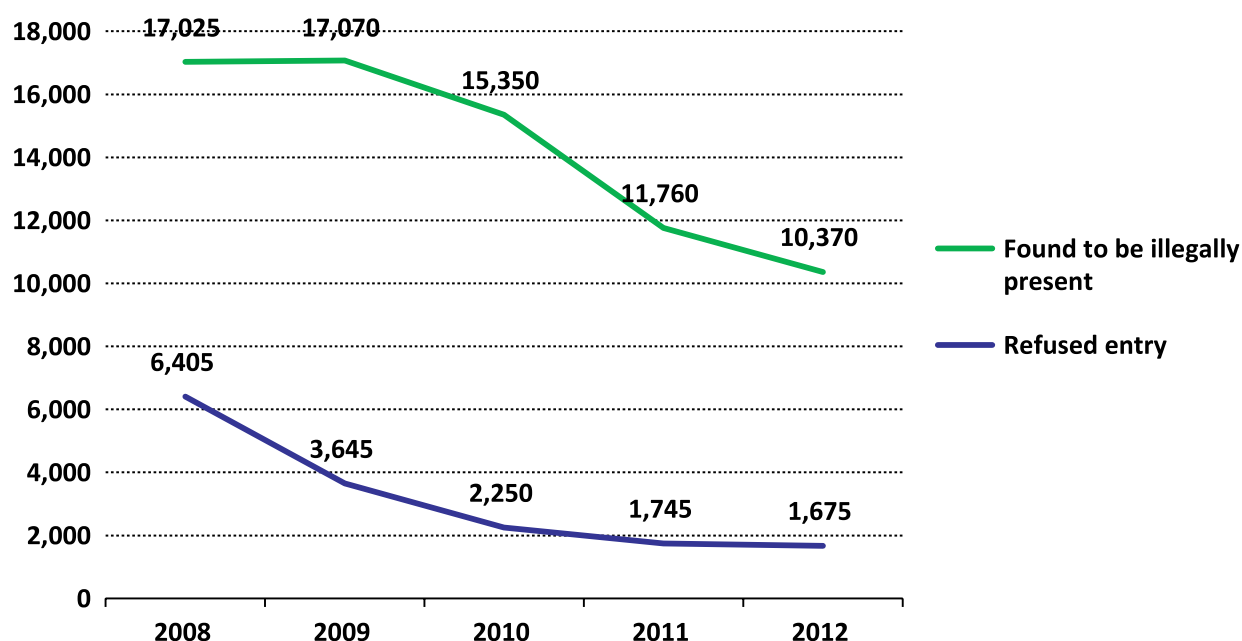
Source: **Eurostat Database, accessed January 2014.**
Notes: **(a) Data include Hong Kong; (b) no data available on Croatia.**

While figures on removals from Europe show an upward movement, removal trends for each Member State have varied over the past five years, with some increasing, others decreasing and others remaining fairly constant (Eurostat, 2014). One of the problems is that it is often impossible to secure return travel documents necessary to remove irregular Chinese nationals to a third country as they neither possess a valid passport nor cooperate with the authorities, retaining or providing false information on their identity to obstruct return procedures. In other cases, support and cooperation by the Chinese Embassy is missing and gives the impression that return migration is not welcome if there is no transfer of skills or other resources (Eurasylum, 2008).

However, trafficking of Chinese women for sex trade in Europe remains a significant problem. A 2013 Eurostat report provides statistics on trafficking trends in 22 EU countries and finds that, after Nigeria, China was the second largest source country of non-EU victims of trafficking, with 248 victims of trafficking in 2010. Furthermore, of suspected traffickers holding non-EU citizenship, the most common countries of citizenship

were Nigeria, China and Turkey, with 92 suspected traffickers of Chinese citizenship detected in 2010 (Eurostat, 2013).

A small number of Chinese seek to obtain residence in Europe by making claims for asylum which are unfounded. In 2012, the European countries receiving the greatest number of requests for asylum from Chinese nationals were: France, which received more than half of all applications made by Chinese in Europe (4,443); the United Kingdom, receiving 1,372 requests in 2012, or 16 per cent of all Chinese requests made in Europe that year (UNHCR, 2014).

Conclusion

This brief review of trends in Chinese migration to Europe illustrates how mobility between China and Europe has increased in recent years. Media reports in Europe tend to focus on cases of smuggling and trafficking from China, but the data presented above suggest that this is not an accurate picture of Chinese migration to Europe. Too often, the focus is on the

negative consequences of Chinese migration, rather than how to maximize the benefits of increased mobility between China and Europe. While there is clearly a need for increased cooperation between China and Europe to reduce irregular migration, both Europe and China have much to gain from migration. For example, the growing Chinese diaspora in Europe can help to forge stronger business and trade links. A growing number of skilled people in China are being trained in Europe, and this too can help to strengthen economic ties. ■

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Protecting the rights of migrants in Europe:
The role of the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe

The Secretariat of the Committee on Migration, Refugees and Displaced Persons[1]

Migration, in particular economic migration, is driven by people's desire to secure better living conditions for themselves and their families. There are also refugees who are fleeing persecution or have been forced to leave their homes. Europe has a long tradition of welcoming newcomers and has various policies designed to foster their integration in the country of destination. There are also 2.5 million persons in Europe who have been internally displaced as a result of protracted conflicts.

Issues of migration, asylum and displaced persons continue to be an important focus of attention in political life in Europe. Migration is a phenomenon which is constantly growing, affecting more and more Council of Europe Member States, whether as countries of origin, transit or destination. This raises new challenges and opportunities in terms of ensuring that Europe attracts the migrants it needs and that it can integrate them fully. It also raises challenges linked to controlling borders and regular migration. Migration however is not just a phenomenon, behind it are people migrating for a range of different reasons and with rights-based needs which are of concern to the Council of Europe and its Parliamentary Assembly.

The Committee on Migration, Refugees and Displaced Persons has a dual purpose: firstly, it develops policies for the protection of the rights of migrants, refugees, asylum-seekers and displaced persons, and the improvement of their living conditions; secondly, by proposing political solutions in keeping with the humanitarian values of the Council of Europe, it seeks to respond to Member States' concerns about significant movements of migrants and refugees, the integration of migrants and population trends.

The Committee comprises 84 members and their alternates and has three subcommittees (on integration, on detention, and on cooperation with non-European countries of origin and transit).

In its work, the Committee deals with a wide range of topics related to the rights of migrants, refugees and asylum-seekers, humanitarian law and displaced persons. The Committee appoints parliamentary rapporteurs mandated to prepare reports based on solid in situ research and hearings with experts. This work culminates in the adoption first by the Committee and then by the Parliamentary Assembly in plenary of resolutions and recommendations addressed to Member States and the Council of Europe's Committee of Ministers.

The Committee's main activities can be grouped under the following themes:

- Promoting integration, dialogue, understanding and respect of migrant communities in their host societies;
- Strengthening the protection of rights of migrants, refugees, asylum-seekers and displaced persons;
- Promoting solutions for protracted displacement of people;
- Humanitarian situation of refugees, asylum-seekers and displaced persons.

The Committee maintains a human rights-based approach focusing on Europe, but taking into account the challenges facing countries of origin. In this respect, it builds on the Partnership for Democracy Agreements and in particular the good working relations with the Moroccan Parliament.

With regard to the first pole of activity, namely integration, the challenges are extensive and the Committee highlights how Member States can improve their integration policies, ensuring integration is a two-way process, which involves both migrants and host societies. Access to the labour

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1 This overview was prepared for *Migration Policy Practice* by the Secretariat of the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe.

market is an issue which is central to the integration of migrants and ensures they are able to make a strong contribution to society. Other issues which the Committee develops include the reintegration of migrants in their home countries, issues concerning young migrants, the challenges of family reunification, and the impact of changing politics on migration and integration in Europe.

The Committee considers that language learning, raising awareness of citizenship-related issues, democratic participation, access to employment, education and housing, protection of rights, and contact between communities are essential for integration and should be included in any strategy implemented for this purpose.

It has prepared a report titled "The portrayal of migrants and refugees during election campaigns" and very soon will adopt the reports "Integration of migrants: Is Europe failing?" and "Integration tests for migrants: A step forward or back?"

With regard to the second pole, strengthening the protection of rights of migrants, refugees, asylum-seekers and displaced persons, the Committee continues its examination of effective returns (particularly what happens to people after their return), as well as its work on the detention of irregular migrants and asylum-seekers, and the possibility of alternatives to detention. The Syrian Arab Republic remains a major challenge in terms of flows of asylum-seekers and refugees, and the Committee follows the situation carefully. Unaccompanied migrant children are a particularly vulnerable group as are stateless persons who number over 600,000 in Member States of the Council of Europe.

As to internally displaced persons, the Committee works on the regions most affected by this, particularly the North Caucasus and the area affected by the war between Georgia and the Russian Federation.

Solutions are possible, but more work needs to be done on finding alternatives to the collective centres, which still exist in many countries, and also on tackling the problems of displaced persons living in private accommodation often falling under the radar of Member States. The Committee would also like to look into the problem of the persons displaced due to environmental issues or other factors (e.g. forced migration), where international protection is not a developed concept.

The Committee also works on monitoring the humanitarian situation of refugees, asylum-seekers and displaced persons, particularly those from the Syrian Arab Republic, and taking into account, as a priority, the situation of women and children who are accommodated in camps in bordering countries.

Working methods

The three subcommittees concentrate on the following themes:

- Detention and alternatives to detention: Following the publication of the guide to visiting detention centres, the Committee organizes training courses for parliamentarians wishing to make such visits, focusing more on national courses and translating the training material into other languages. The subcommittee also examines the question of alternative solutions to detention.
- Questions relating to integration: The Committee explores the possibility of holding an international conference on integration and is currently working on a report addressing integration practices in Member States, using the Migrant Integration Policy Index (MIPEX) data as a benchmark.
- Cooperation with countries of origin and transit countries outside Europe: The emphasis is placed on issues of common interest for countries with partner-for-democracy status, candidate countries and observer countries. A conference is being organized on human rights challenges to managing migration in the region as well as a report on the challenges of North–South migration for Mediterranean rim countries.

Within the Council of Europe, the Committee maintains close contact with intergovernmental committees and institutions which are active within the Council's area of competence, including the Commissioner for Human Rights, the European Commission against Racism and Intolerance, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Steering Committee for Human Rights, the Ad hoc Committee of Experts on Roma Issues, and the European Committee of Social Rights. It also presents opinions to the Assembly on the activities of the Council of Europe Development Bank.

The Committee works in close cooperation with government and non-governmental international humanitarian organizations, such as the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC), the International Organization for Migration (IOM), Amnesty International, and various refugee and migration organizations. Representatives of these organizations attend committee meetings as observers, offering the benefit of their experience. At regular intervals, the Committee submits reports to the Assembly on the activities of the UNHCR, the ICRC and IOM.

Cooperation between the Committee and IOM is very fruitful and multifaceted, including participation in conferences, exchange of expertise and high-level visits. The Committee closely follows the main initiatives of IOM, which inspire members of the Committee to prepare new reports. To give an example, after participating in IOM's high-level Diaspora Ministerial Conference, organized in June 2013, the member of the Committee from Italy, Mr Andrea Rigoni, started preparation of a report on democratic participation of migrant diaspora. This report will bring the parliamentary dimension to the diaspora dialogue. Committee members often use IOM expertise in field missions while going on fact-finding or monitoring visits to Member States. The work done by IOM at the international and national levels is largely covered in the reports prepared by the Committee. ■

**For further information, please see:**
http://assembly.coe.int/defaultE.asp

**The list of reports and adopted
texts can be accessed on:**
http://assembly.coe.int/CommitteeDocs/2011/
aminf10rev_2011.pdf

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Publications
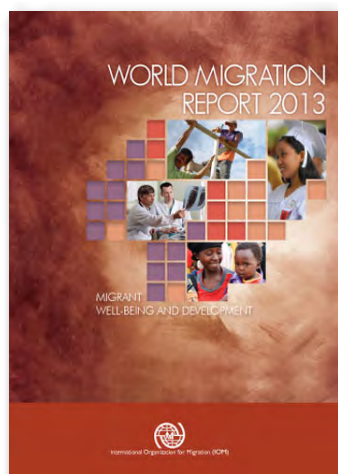
World Migration Report 2013 – Migrant Well-being and Development
2013/220 pages
ISBN 978-92-9068-668-2
ISSN 1561-5502
English
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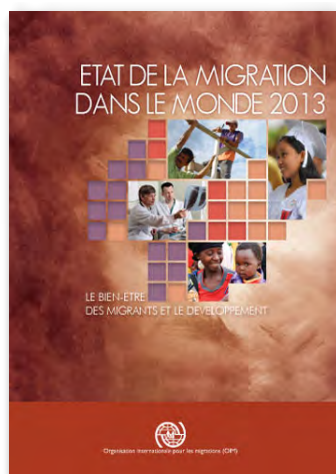
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ISSN 1561-5502
Français
40 dollars E.-U.

Informe sobre las Migraciones en el Mundo 2013 – El Bienestar de los Migrantes y el Desarrollo
2013/220 pages
ISBN 978-92-9068-670-5
ISSN 1561-5502
Español
40 dólares EE.UU.

In 2013, a second High-level Dialogue on International Migration and Development (HLD) will be held, presenting the international community with a critical opportunity to focus its attention on how to make migration work for development and poverty reduction. The HLD takes place at an important time, as the international community is seeking to formulate a new agenda for global development as we approach the target year of the Millennium Development Goals in 2015.

The *World Migration Report 2013* contributes to the global debate on migration and development in three ways: First, the focus of the report is on the migrant, and on how migration affects a person's well-being. Many reports on migration and development focus on the impact of remittances: the money that migrants send back home. This report takes a different approach, exploring how migration affects a person's quality of life and their human development across a broad range of dimensions. Second, the report draws upon the findings of a unique source of data – the Gallup World Poll surveys, conducted in more than 150 countries, to assess the well-being of migrants worldwide for the first time. Third, the report sheds new light on how migrants rate their lives, whether they live in a high-income country in the North, or a low- or middle-income country in the South.

Traditionally, the focus has been on those migrating from lower-income countries to more affluent ones; this report considers movements in all four migration pathways and their implications for development i.e. migration from the South to North, between countries of the South or between countries of the North, as well as movements from the North to the South.

The first three chapters of the *World Migration Report 2013* provide an introduction to the chosen theme "Migrant Well-being and Development", present the current global migration situation across four migration pathways and review existing research on the emerging field of happiness and subjective well-being.

Chapter four presents original findings on migrant well-being from the Gallup World Poll, looking at outcomes on six core dimensions of well-being across the four migration pathways.

The final part draws conclusions and makes recommendations for future initiatives to monitor migrant well-being and the impact of migration on development, with reference to the inclusion of migration in the post-2015 global development framework.
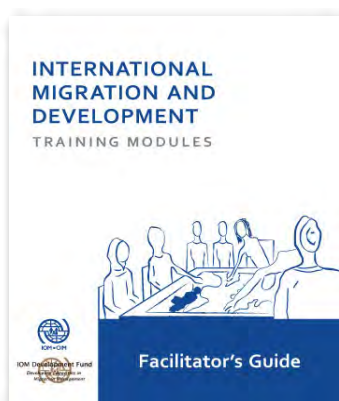
International Migration and Development Training Modules

2013/418 pages/English

For additional information, obtaining this publication or scheduling training sessions, please contact: lhd@iom.int.

The *International Migration and Development Training Modules* provide policymakers and practitioners with an easy-to-follow but thorough introduction to current discourses, policies and practices linking migration and development. This discussion is enriched through references drawn, for instance, from academic works and from the experience and expertise of the International Organization for Migration (IOM) in programme and project implementation, in developing partnerships with multiple stakeholders or in supporting Member States' capacity-building efforts. The modules are designed to provide trainers, policymakers and practitioners with structured training sessions, covering theoretical and practical elements intended to strengthen their professional capabilities for the formulation or implementation of migration and development policies and initiatives. This three-course training programme is designed to facilitate the delivery of face-to-face training workshops, promoting cooperative, experiential and problem-based learning. The modular approach built in these materials allows facilitators to easily adapt the programme to the specific needs, time frame and conditions of each training course: Course I sets the stage for the training and can be combined with different modules from Course II and Course III. The three courses intend to: (a) introduce users to the different waves of thinking that have influenced the way in which the migration–development nexus is perceived; (b) explore the existing frameworks for cooperation in the field of migration and development; and (c) familiarize users with practices aimed at linking international migration and development. Intended to help users to reflect on different discourses, issues and initiatives in the field of migration and development and to apply them to their particular context, the manual also guides them to identify the potential opportunities and challenges that they present. Each course is divided into modules, which are sub-divided into training sessions. Each session starts with an introduction to the aims, objectives and learning outcomes, and includes a content outline with the suggested duration for the session. The sessions are structured around group activities and discussions or presentations that mutually reinforce the learning objectives. Sample activities (presentations, role plays, case studies) are designed to stimulate participatory learning and teamwork. The sessions include background information, examples and case studies, key points, wrap-up summaries, lists of references and handouts for participants. The modules are accompanied by an electronic copy of the manual, sample presentations, select videos and reading materials for facilitators, uploaded in a USB key.

International Migration, Vol. 52(2) 2014
The globally mobile skilled labour force:
Policy challenges and economic opportunities

2014/217 pages/English

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International Migration is a refereed bimonthly review of the International Organization for Migration (IOM) on current migration issues as analysed by demographers, economists, and sociologists all over the world. The journal is edited at Georgetown University's Institute for the Study of International Migration (ISIM) and published and distributed by Wiley. The editors at ISIM are responsible for the direction and content of the journal.

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- Indian Students and the Evolution of the Study-Migration Pathway in Australia by Lesleyanne Hawthorne
- Attracting and Retaining Globally Mobile Skilled Migrants: Policy Challenges based on Australian Research by Siew-Ean Khoo
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